

Residential Tenancies Tribunal

Application: 2022 No. 396NL
Application: 2022 No. 404NL

Decision 22-0396-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 23 June 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. His property manager, [REDACTED] ("[REDACTED]"), was also in attendance.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", was not in attendance.

Issues before the Tribunal

4. The landlord is seeking an order for vacant possession of the rented premises.
5. The tenant is seeking a determination of the validity of the termination notice issued to him by the landlord.

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. Also relevant and considered in this case are sections 10 and 24 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

8. The tenant was not present or represented at the hearing and I was unable to reach him by telephone. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as he has been properly served. With her application, the landlord submitted an affidavit stating that tenant had been served with the application, by registered mail, and the associated tracking history shows that it was delivered on 01 June 2022. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.
9. Although the tenant had filed an application with this Board—2022 No. 404NL—as a copy of that application was not served on the landlord, and as the tenant was not in attendance at the hearing to provide any evidence in support of his claim, his application was dismissed.

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

10. The landlord stated that he had entered into a verbal rental agreement with the tenant approximately 1 year ago. The agreed rent is set at \$1500.00 per month and the landlord stated that the tenant had paid a security deposit of \$800.00.
11. The landlord testified that, over the past several months, the tenant has been calling him on his cellphone just about every day and he has been making threats on his life and he has also been demanding money. The landlord stated that he does not know why the tenant thinks that he owes him money, but he claimed that the tenant had told him that if he did not pay him that he would "break up the house" and that he would kill the landlord.
12. The landlord also recounted an incident which took place in early May 2022. He stated that he was at one of his other properties, where he was carrying out renovations, and the tenant arrived there and began shouting and banging on the door. The landlord stated that he had left the keys in the door, and the tenant used them to enter the house, where he had to be restrained by one of his workers, who eventually persuaded him to leave. With his application, the landlord had submitted an affidavit from that worker in which he reiterated that account, and he writes that the tenant had was shouting and had said to the landlord: "I will put you in a body bag".

13. The landlord also complained that the tenant is keeping a dog at the property, which is not allowed, and he claimed that it is urinating on the deck and that the urine is dripping onto the deck of the resident downstairs. He also stated that that resident had told him that the police had told her that she ought to move out her apartment as it is not safe with the tenant living in that same complex.
14. Because of these constant threats, the landlord stated that he had issued the tenant several termination notices, and a copy of the most recent notice was submitted with his application. The landlord testified that that notice was posted to the tenant's door on 13 May 2022. It was issued under section 24 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 19 May 2022.
15. The landlord stated that the tenant has not vacated as required, and he is seeking an order for vacant possession of the rented premises.

Analysis

16. Statutory conditions 7, set out in section 10 of the *Residential Tenancies Act, 2018*, states:

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

...

7. Peaceful Enjoyment and Reasonable Privacy -

(a) The tenant shall not unreasonably interfere with the rights and reasonable privacy of a landlord or other tenants in the residential premises, a common area or the property of which they form a part.

and according to section 24:

Notice where tenant contravenes peaceful enjoyment and reasonable privacy

24. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 7(a) set out in subsection 10(1), the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises on a specified date not less than 5 days after the notice has been served.

(2) *In addition to the requirements under section 34, a notice under this section shall*

- (a) *be signed by the landlord;*
- (b) *state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and*
- (c) *be served in accordance with section 35.*

17. I found the landlord to be credible and believable and I accept his claim that the tenant is continuously calling him on his phone, demanding money, and making threats. I also accept his corroborated account of that incident which occurred in early May 2022, at one of his other properties, where the tenant had entered that property, without permission, and was again threatening the landlord and had to be restrained.
18. That sort of behaviour, as described by the landlord, is clearly anti-social and unreasonable and is not something anyone should be subjected to. As such, I am of the view that the landlord was in a position, on 13 May 2022, to issue the tenant a termination notice under this section of the Act.
19. As the notice meets all the requirements set out here, it is a valid notice.

Decision

20. The landlord's claim for an order for vacant possession of the rented premises succeeds
21. The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

Issue 2: Hearing Expenses

22. The landlord paid a fee of \$20.00 to file this application and he submitted a receipt showing that he had paid \$13.66 to send the application and notice of hearing to the tenant by registered mail. As his claim has been successful, the landlord is authorized to retain \$33.66 of the security deposit to compensate for those expenses.

08 July 2022

Date

John R. Cook
Residential Tenancies Tribunal